

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CM-12319-C-2016 in/and
RSA No.4769 of 2016 (O&M)
Date of Decision: 09.10.2018

Raj Rani

.....Appellant

Versus

Nek Chand and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Raj Kumar Kakkar, Advocate for the appellant.

TEJINDER SINGH DHINDSA J.

Plaintiff, Raj Rani is in second appeal before this Court having remained unsuccessful in both the Courts below.

Brief facts of the case are that the plaintiff instituted a suit for declaration to the effect that the orders dated 06.10.2005 and 07.12.2005 passed by the Assistant Collector, Ist Grade, Jalalabad (W) and Collector, Jalalabad, respectively, pertaining to partition proceedings are bad in law. Consequential relief of permanent injunction was also sought restraining the defendants from disturbing the peaceful possession of the plaintiff over land measuring 01 kanal 02 marlas that was stated to have been purchased by the plaintiff from Sajwara Ram, as per sale-deed dated 06.06.2005.

Suit filed by the plaintiff was dismissed by the Trial Court on 19.07.2012. Civil appeal preferred has met the same fate in the light of judgment dated 24.07.2014, passed by the learned Additional District Judge, Fazilka.

Learned counsel for the appellant has raised two fold

submission.

It is argued that in the partition proceedings initiated, the entire land had not been included and as such an order of partial partition cannot sustain. Second submission raised by learned counsel is that the appellant has not been made party to the partition proceedings and being a necessary and proper party the orders dated 06.10.2005, passed by the Assistant Collector Ist Grade, Jalalabad as also order dated 07.12.2005, passed by the Collector, Jalalabad, were liable to be declared a nullity.

Having heard learned counsel for the appellant at length and having perused the case paper-book, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

A concurrent finding of fact has been recorded by the Courts below upon due appreciation of evidence that as per sale-deed Exhibit P-1 vide which the appellant herein had purchased land measuring 01 kanal 02 marlas from Sajwara Ram, such land was comprised in Khewat No.514, Khatoni No.1336 and Khasra No.70//15/1(6-2). Appellant had purchased 22/122 share by virtue of the sale-deed. The order dated 06.10.2005 passed by Assistant Collector Ist Grade, Jalalabad (West), which had been adduced on record as Exhibit P-C and Exhibit P-6 reflected that the entire land of the khewat out of which plaintiff/appellant had purchased land was made subject matter of partition proceedings. Furthermore, the Courts below have noticed that the predecessor-in-interest of the plaintiff-appellant i.e. Sajwara Ram, who had share in the Khewat to the extent of 14 marlas was made a party to the partition proceedings.

Under such circumstances, both the contentions raised by

learned counsel representing the appellant do not carry any weight.

No other point was urged.

No infirmity is found in the judgment recorded by the Trial Court and duly affirmed by the lower Appellate Court and which would warrant any interference.

The instant appeal is accompanied by an application i.e. CM No.12319-C of 2016, filed under Section 5 of the Limitation Act, seeking condonation of delay of 611 days that has occurred in filing the regular second appeal. Contents of the application do not justify the inordinate delay of 611 days in filing the main appeal. Onus was upon the applicant/appellant to explain each and every day of delay. Such onus has not been discharged. Prayer for condonation of delay of 611 days, as such is declined.

Accordingly, the Regular Second Appeal is dismissed on merits as well as on the ground of delay.

Dismissed.

**(TEJINDER SINGH DHINDSA)
JUDGE**

October 09, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No